

UNITED STATES OF AMERICA

v.

KHALID SHEIKH MOHAMMED, WALID  
MUHAMMAD SALIH MUBARAK BIN  
'ATTASH, RAMZI BIN AL SHIBH, ALI  
ABDUL-AZIZ ALI, MUSTAFA AHMED  
ADAM AL HAWSAWI

**D-134**

Defense Motion for Appropriate Relief:  
Release of Audio and Video Recordings  
and Transcript of 21 September 2009  
Military Commission Session

**Order**

1. On 2 October 2009, defense counsel for Mr. Bin al Shibh filed a motion for appropriate relief requesting this Commission order the production of all audio and video recordings of the Military Commission session held on 21 September 2009 in Guantanamo Bay, Cuba and production of a written transcript of that session. In a 6 October 2009 response, the government indicated it did not oppose release of the transcript once authenticated by the military judge but did oppose release of any audio recordings. The government asserts there are no video recordings of this hearing.
2. That part of the defense motion requesting a copy of the authenticated transcript of the 21 September 2009 Military Commission session is GRANTED. In accordance with Rule 3.9 of the Rules of Court, the Commission directs public release of pages 1245 thru 1278. As no video tape of the session apparently exists, the defense request to release it and the court reporter audio tapes is DENIED.

*United States v. Mohammed, et al. D-134 Order*

3. The Commission directs that a copy of this order be served upon the prosecution and all defense counsel of record, and that it be provided to the Clerk of Court for public release. The Commission further directs the Clerk of Court to have this order translated into Arabic and served upon each of the above named accused. The underlying defense motion and government response will also be provided to the Clerk of Court for public release, after appropriate redactions for privacy and security considerations.

So Ordered this 28th Day of October 2009:

/s/  
Stephen R. Henley  
Colonel, U.S. Army  
Military Judge

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA**

**UNITED STATES OF AMERICA**

**v.**

**KHALID SHEIKH MOHAMMED,  
WALID MUHAMMAD SALIH MUBARAK  
BIN 'ATTASH,  
RAMZI BIN AL SHIBH,  
ALI ABDUL AZIZ ALI,  
MUSTAFA AHMED ADAM  
AL HAWSAWI**

**D-\_\_\_**

**Defense Request for Production of  
Recording and Transcript of Proceedings**

Dated: 2 Oct 2009

1. **Timeliness:** This motion is timely filed. *See* R.M.C. 906(a).
2. **Relief Sought:** Mr. bin al Shibh, by and through detailed defense counsel, respectfully requests this the Commission order production of all audio and video recordings of the proceedings held in this case on September 21, 2009, and production of a written transcript of all the proceedings from the same date.
3. **Overview:** Mr. bin al Shibh respectfully requests production of all recordings and transcripts of the hearing held in this case on September 21, 2009.
4. **Burden and Standard of Proof:** As the moving party, the defense bears the burden to establish the need for production of the transcript. *See* R.M.C. 905(c)(2)(A). The burden of proof on any factual issue the resolution of which is necessary to decide this motion shall be by a preponderance of the evidence. *See* R.M.C. 905(c)(1).
5. **Facts:**
  - a. A hearing was held in this case on-board Guantanamo Naval Base, Cuba, on September 21, 2009. No part of this proceeding was classified or held in closed session.
  - b. Mr. bin al Shibh filed a Petition for Writ of Mandamus and Prohibition in the U.S Court of Appeals for the District of Columbia on September 9, 2009. Transcripts from this Commission case were referenced as attachments to this Petition.
  - c. The Circuit Court Clerk asked detailed counsel to update it regarding the status of production of the record to the Circuit. The Circuit does not have available to it the full record it customarily obtains in reviewing cases, due to the peculiar nature of military commissions proceedings. The defense filed a notice updating the Circuit on September 16, 2009, wherein it informed the Circuit that the transcripts would be produced when released by this Commission. *See* Attachment A to concurrently filed Motion for Appropriate Relief Seeking Release of Unredacted Records.

**6. Discussion:**

In accordance with Rule for Military Commissions (RCM) 701 through 703 and RMC 1103, Mr. bin al Shibh respectfully requests production of all audio and video recordings of the Commission hearing held on 21 September 2009 in the subject case, as well as production of a written transcript of all the proceedings from the same date. Since no part of this proceeding was classified or held in closed session, it is expected that none of the recording or transcript is classified.

The above-requested recording and transcript are necessary in order for counsel to review the proceedings, assess the state of the record with respect to Mr. bin al Shibh's defense, and produce to the Circuit all information necessary to its review of his Petition.

**7. Request for Witnesses: None.**

**9. Conference with Opposing Counsel:** Pursuant to Military Commissions Rules of Court, Rule 3.3, the defense conferred with the prosecution on 2 October 2009. The prosecution does not oppose this request.

**10. Attachment:**

Request of Mr. Ramzi bin al Shibh for Production of Transcript and Recording of Proceeding of 21 September 2009 ICO *United States v. Mohammed, et al.*, dated 25 September 09

Respectfully submitted,

By: \_\_\_\_\_  
CDR SUZANNE LACHELIER, JAGC, USNR  
*Detailed Defense Counsel for*  
*Mr. Ramzi bin al Shibh*

By: \_\_\_\_\_  
LCDR RICHARD FEDERICO, JAGC, USN  
*Detailed Defense Counsel for*  
*Mr. Ramzi bin al Shibh*

# Attachment

25 Sep 2009

From: S.M. Lachelier, CDR, JAGC, USN, Detailed Military  
Defense Counsel, Office of the Chief Defense Counsel  
R.E.N. Federico, LT, JAGC, USN, Detailed Military  
Defense Counsel, Office of the Chief Defense Counsel

To: S. Henley, COL, USA, Military Judge, Military Commission  
Judiciary

Via: [REDACTED], COL, USA, Attorney Advisor, Military  
Trial Judiciary

Subj: REQUEST OF MR. RAMZI BIN AL SHIBH FOR PRODUCTION OF  
TRANSCRIPT AND RECORDING OF PROCEEDING OF 21 SEPTEMBER  
2009 *ICO UNITED STATES v. MOHAMMED, ET AL.*

Ref: (a) R.M.C. 701-703  
(b) R.M.C. 909  
(c) R.M.C. 1103

1. Pursuant to references (a) through (c), the defense respectfully requests production of all audio and video recordings of the Commission hearing held on 21 September 2009 in the subject case, as well as production of a written transcript of all the proceedings from the same date.
2. No part of this proceeding was classified or held in closed session.
3. The above-requested recording and transcript are necessary in order for counsel to review the proceedings and assess the state of the record with respect to Mr. bin al Shibh's defense.

/s/

S.M. Lachelier

UNITED STATES OF AMERICA

v.

**KHALID SHEIKH MOHAMMED;  
WALID MUHAMMAD SALIH MUBARAK  
BIN 'ATTASH;  
RAMZI BINALSHIBH;  
ALI ABDUL AZIZ ALI;  
MUSTAFA AHMED AL HAWSAWI**

**D-134  
Government Response**

to the  
Defense Request for Production of Recording  
and Transcript of Proceedings  
6 October 2009

1. **Timeliness:** This response is timely filed.
2. **Relief Sought:** The Government respectfully requests the Military Judge deny the Defense Motion requesting production of audio and video recordings of the proceedings. The Government does not oppose the release of the transcript of the 21 September 2009 hearing once authenticated.
3. **Burden of Proof:** As the requesting/moving party, the accused bears the burden of persuasion. See Rule for Military Commissions (RMC) 905(c).
4. **Facts:**
  - a. A hearing was held at Guantanamo Bay, Cuba, on 21 September 2009. None of the five accused attended this hearing. The transcript of that hearing is less than 35 pages. The Prosecution received the transcript and request for errata on 6 October 2009. We will review the record for errors before 8 October 2009 and submit our errata, if any, to the court reporters. There are no video recordings of the hearing. An audio recording is used to transcribe the hearing.
  - b. When the Prosecution was asked for our position on the defense motion on 2 October 2009, we agreed to the release of transcripts. There was no mention of audio/video tapes. Again, there are no video tapes.
5. **Discussion and Conclusion:** The Prosecution does not oppose the release of the transcript after it is authenticated. We oppose the release of audio recordings. If counsel has concern that the transcript is different than that on the audio recording, they may ask the court reporters to make certain the transcript is correct or seek permission to listen to the tapes.
6. **Request for Oral Argument:** The Prosecution does not request oral argument but reserves the right to respond to any oral argument the defense may make.

7. **Respectfully submitted,**

Robert L. Swann  
Prosecutor



1 [The R.M.C. 803 session was called to order at 1259, 21  
2 September 2009.]

3 MJ [COL HENLEY]: The military commission will come to  
4 order.

5 It should be apparent that today's session has been  
6 overcome by events given that none of the five accused and  
7 detailed military defense counsel for Mr. al Shibh and Mr. al  
8 Hawsawi are not present. A short explanation is in order.

9 [Commander Lachelier, defense counsel for Mr. al Shibh, was  
10 present.]

11 On 21 January 2009, over defense objection, this  
12 commission granted a government motion for a 100-day continuance  
13 in this case. On 14 May 2009, the commission granted, again  
14 over defense objection, a second government delay for an  
15 additional 120 days but did docket a session to run 21 through  
16 25 September 2009 to begin receiving evidence on the pending  
17 Rule for Military Commission 909 incompetence determination  
18 hearing for Mr. bin al Shibh.

19 On 16 September 2009, the government filed a third  
20 request asking the commission to: one, grant an additional 60-  
21 day delay; and two, continue the scheduled R.M.C. 909  
22 incompetence hearing to begin no earlier than 16 November 2009.

23 The detailed defense counsel for Mr. bin al Shibh did

1 not oppose the motion to continue the R.M.C. 909 hearing, which  
2 the commission subsequently granted on 17 September 2009.  
3 Detailed defense counsel for Messrs. bin al Shibh and al Hawsawi  
4 also did not oppose the 60-day continuance.

5           Since the commission had not received a formal reply  
6 from the three pro se accused regarding the government's third  
7 continuance request, it scheduled today's session to hear  
8 argument on this part of the government motion.

9           As the subject involved a matter which affected each  
10 of the five accused, all were invited to attend. However, on 21  
11 September 2009, the commission received a translated filing from  
12 Mr. Sheikh Mohammed, Bin Attash, and Ali, dated 18 September  
13 2009, in which they stated they did not object to the 60-day  
14 continuance. As such, earlier today the military commission  
15 granted the unopposed motion for a 60-day continuance.

16           What remained to be heard, however, were the pending  
17 pro se filings, which were not joined by and did not relate to  
18 Messrs. bin al Shibh and al Hawsawi. Accordingly, the  
19 commission directed that only the three pro se accused that had  
20 joined in the motions being heard, their standby counsel, and  
21 government counsel could be present in the courtroom.

22           The pro se filings included motions to dismiss  
23 military standby counsel and civilian legal advisors, a motion

1 to compel Arabic translation of all commission sessions, and a  
2 motion to compel research supplies and materials.

3 In other words, because Messrs. bin al Shibh and al  
4 Hawsawi would have no right to attend this proceeding, if the  
5 cases were being tried separately, they were not authorized to  
6 attend this session of the military commission and are absent  
7 along with detailed military defense counsel and civilian legal  
8 advisors.

9 As to Messrs. Khalid Sheikh Mohammed, Bin Attash, and  
10 Ali, normally an accused has a right to be present for all  
11 commission proceedings. While the commission expected the three  
12 pro se accused to attend today's session, the record should  
13 reflect that Mr. Sheikh Mohammed, Bin Attash, and Ali are not  
14 present in court. Under the present commission rules, they can  
15 voluntarily waive the right to appear.

16 Mr. Swann, do you have any information regarding their  
17 absence?

18 CTC [MR. SWANN]: Your Honor, as I understand it, they all  
19 indicated that they did not wish to attend the continuance  
20 motions. However, I am not aware the three individuals, the pro  
21 se accused, were advised that this court would continue to  
22 consider those pro se motions, as reflected in your order that  
23 was posted about an hour ago, maybe an hour and a half.

1           As I understand it in talking to [REDACTED], they  
2 were told about the continuance motions--the continuance motion  
3 and decided not to come. They were not told anything about this  
4 court considering the pro se motions.

5           Therefore, the government believes that it's incumbent  
6 that they be afforded an opportunity, be told that you intend to  
7 consider those--I think you indicated three, but my--I actually  
8 believe there are five or six of those pro se motions that are  
9 pending based not only on an earlier order but also what  
10 appears, I think, in one of the footnotes that you dropped into  
11 your order. There are about six of those things. I'm not aware  
12 that they were told that those matters would be litigated here  
13 today.

14           Therefore, we're asking you to allow us to go back to  
15 the three individuals, tell them that we're going to consider  
16 the pro se motions. If at that point in time they waive their  
17 appearance, so be it; if they don't, then they'll be here.  
18 However, we believe, the United States believes, that every  
19 accused should be present at every session of these proceedings.

20           Now, Your Honor, I draw your attention back in January  
21 of this year, and I believe it was when you litigated D-086, and  
22 there was a--the defense opposed the presence of the other four  
23 accused during the Ramzi bin al Shibh competency hearing. It

1 was at that point in time there was some discussion, you asked  
2 each of the accused whether they wished to attend that hearing.  
3 To the person, they indicated they did. It was at that point in  
4 time you decided, and I reference pages 972 to 980 of the record  
5 of trial in this case, you decided that each of them could  
6 attend that 909 hearing, subject to reconsideration should they  
7 act up at some point during the hearing.

8 Now, we believe that that was the right decision at  
9 that point in time. We do not believe that it is correct that  
10 they be deprived of an opportunity to be present at any point in  
11 time in these proceedings.

12 Therefore, getting back to your question, we believe  
13 that what should be happening now is that each of the pro se  
14 accused should be advised that you intend to take up those pro  
15 se motions, afforded an opportunity then to attend; and if they  
16 don't attend, be forcibly extracted and brought to this court so  
17 that we can litigate those motions.

18 We cannot continue to have accused who don't want to  
19 come to trial or be afforded an opportunity not to come to  
20 trial. I'm not aware of any court in America that would allow  
21 an accused to make a decision like that. Even in the Moussaoui  
22 case, he attempted to do this on several occasions, and he was  
23 forcibly extracted and brought to court by the marshals.

1           Now, we have similar individuals that can do that.  
2   And we're asking the court to revisit its decision that it made  
3   in January, I believe on the 19th of January at that session in  
4   D-086. We believe that decision was correct, and it's not  
5   correct not to have these individuals in the courtroom.

6           MJ [COL HENLEY]: Where are the three now, Mr. Swann?

7           CTC [MR. SWANN]: I'm sorry, sir?

8           MJ [COL HENLEY]: Where are the three now? Where are they  
9   physically? Are they outside the courtroom?

10          CTC [MR. SWANN]: No, sir, they're at Camp Seven. They  
11   have not been told that you intend to litigate these pro se  
12   motions. As I understand it in talking to Major Wolfe, he was  
13   given guidance only to tell them what he was told to tell them  
14   by the court.

15          MJ [COL HENLEY]: All right. We're mixing two issues. You  
16   have the authority to compel their presence here now. If they  
17   decide not to come into the courtroom, that's another matter.  
18   Whose decision was it not to bring them here? Is that the JTF  
19   Commander's decision?

20          CTC [MR. SWANN]: Yes, sir. And I've--we've been through  
21   this before with Judge Kohlmann.

22          MJ [COL HENLEY]: Are you asking that the court reconsider  
23   that motion?

1           CTC [MR. SWANN]: No, I'm not asking the court--in that  
2 instance, Judge Kohlmann said it was the responsibility of the  
3 United States, and Kohlmann expected that these individuals be  
4 here. All we're asking you to do is to reinforce that with the  
5 JTF Commander, that you expect that they bring these individuals  
6 to court when you say that there is a court session.

7           That's all we're asking. You have the authority to  
8 compel the JTF Commander to do precisely that, and we're asking  
9 that you do it.

10          MJ [COL HENLEY]: Do you have anything else?

11          CTC [MR. SWANN]: No, sir.

12          MJ [COL HENLEY]: Thank you, Counsel.

13                 Colonel Acuff, Mr. Nevin, did you have a chance to  
14 talk to Mr. Sheikh Mohammed?

15          DC [LTC ACUFF]: No, Your Honor, we have not.

16          CDC [MR. NEVIN]: Your Honor, we haven't met with  
17 Mr. Mohammed directly. I did receive a letter from him this  
18 morning and--or actually just a few minutes ago. And he asked  
19 that the court be made aware of certain information. And that's  
20 information that he conveyed to [REDACTED], if I'm not  
21 mistaken. And I understand, after a conversation with [REDACTED]  
22 [REDACTED], that he, [REDACTED], conveyed that information to the  
23 court in some fashion, I think in written fashion.

1 MJ [COL HENLEY]: Right. I believe that was the 18

2 September filing which was translated this morning.

3 CDC [MR. NEVIN]: Your Honor, could I have just a second  
4 to--I think we're talking about a different document. I might  
5 just confer with [REDACTED], if that's all right.

6 **[Mr. Nevin and [REDACTED] conferred.]**

7 CDC [MR. NEVIN]: Your Honor, [REDACTED] is present and,  
8 of course, could testify to these matters if the court thinks  
9 that's appropriate. But what [REDACTED] tells me is that he,  
10 [REDACTED], read a notification of rights to--of a right to  
11 attend the hearing of Mr. Mohammed earlier today, that during  
12 that conversation Mr. Mohammed spoke to him in English and asked  
13 him to convey information to the court. He, [REDACTED], wrote  
14 down verbatim what Mr. Mohammed said on that notification of  
15 rights form, if I understand correctly. And then he, [REDACTED]  
16 [REDACTED], provided that to the Clerk of Court.

17 And now, in turn, Mr. Mohammed has written to me, and  
18 he has said that he would like to have the information that he  
19 provided to [REDACTED] read into the record in open court. And  
20 so, I do request that the court do that.

21 Now, I recognize that because it's a statement of  
22 Mr. Mohammed, there may be classification issues, and it may not  
23 be possible to do it right here on the spot, but that was



1 Mr. Mohammed's request, and I want to pass that along to you as  
2 a request on his behalf, number one.

3           Number two, Mr. Mohammed has been told, not once but  
4 twice, and maybe more often, that you were going to take up  
5 these hearings today. You wrote it in MJ-014 in very clear  
6 language, and you wrote it in MJ-017 in very clear language. I  
7 don't think there could have been any mistake about that. And  
8 you've also said it.

9           I recognize you're granting a continuance today. And  
10 I think the court knows that our position about what the  
11 continuance means in terms of whether there should be--whether  
12 this constitutes a proceeding may be different from the court's,  
13 and I'm not proposing to get into that at this moment. But the  
14 court's decision to hear MJ--to hear these pro se motions, as  
15 expressed in MJ-014 and in MJ-017, I think was very clear, and  
16 it was very clear that it was in the context of this taking  
17 place despite the continuance.

18           So I disagree with Mr. Swann. I think they have been  
19 put on notice that this would be the time and the place for  
20 these hearings.

21           I will say more broadly I do ask that the court not  
22 rule on these motions during the course of a continuance. I  
23 think it does--the last time counsel expressed this I believe

1 was in a pleading filed recently, and the way they articulated  
2 it was that there would be no change in the status quo.

3 I think at least some of these motions would work a  
4 change in the status quo. And to the extent that they do, it  
5 seems to me that the parties at least are in agreement  
6 that--that that should not occur.

7 So with that exception, I simply wanted to pass along  
8 those points. I do make that request. And I do make that  
9 observation, that I think the accused are on notice of the  
10 existence of the court's intention to hold the hearing today.

11 Thank you.

12 MJ [COL HENLEY]: I have not received, and I'm personally  
13 unaware of, this second filing given to [REDACTED] today. I  
14 have not seen it.

15 CDC [MR. NEVIN]: Well----

16 MJ [COL HENLEY]: I don't think that changes----

17 CDC [MR. NEVIN]: Probably not.

18 MJ [COL HENLEY]: ----how we'll end up today.

19 CDC [MR. NEVIN]: I guess my request would be that--I  
20 assume it's in--it's in the process of making its way to you, I  
21 assume it's in the pipeline. But I do request that it be read  
22 in open court as Mr. Mohammed requested of me. And I'll consult  
23 with [REDACTED]; if there's--if I've misstated the situation or

1 something, I can clarify that at a later time.

2 MJ [COL HENLEY]: Commander Hatcher, did you have a chance  
3 to speak to Mr. Bin Attash about appearing today?

4 DC [LCDR HATCHER]: Your Honor, I did not. I did attempt  
5 to arrange a visit. [REDACTED] offered to facilitate setting  
6 that visit up here at the ELC. And essentially, that resulted  
7 in a letter being sent back to me from the client in which he  
8 indicated that he did not wish to come to court today and that  
9 he was again stating his consent to the government's motion for  
10 a 60-day continuance.

11 MJ [COL HENLEY]: All right. Thank you.

12 And, Major Fitzgibbons, did you have a chance to speak  
13 to Mr. Ali?

14 DC [MAJ FITZGIBBONS]: I have communicated with Mr. Ali via  
15 writing, sir. Last week when the court issued its scheduling  
16 order, I sent that in to him. Out of respect for Ramadan, we  
17 have not--we did not meet with him last week. This morning, I  
18 received a letter from him that indicated that he had executed a  
19 waiver of his presence, and I have not seen that document either  
20 but believe it's with the Clerk's office.

21 MJ [COL HENLEY]: Okay. Thank you.

22 Mr. Swann, you appear to want to stand several times.  
23 Do you have something further?

1           CTC [MR. SWANN]: Your Honor, I'd simply point out that  
2 your most recent order has not been given to the accused  
3 regarding their--the pro se issues. And I also point out the  
4 fact that in MJ-014, which was your order, dated 24 July 2009,  
5 you indicated you would take up those pro se motions.

6           But after that, even I was somewhat confused as to  
7 what we were going to be doing the week of 21 to 25 September  
8 because we seemingly did not include, in the interim order, any  
9 indication that we would be taking up the pro se motions.

10           I mean your order granting the continuance with  
11 respect to Mr. bin al Shibh and Hawsawi, which I think came out  
12 last week, didn't talk about the pro se motions. And even  
13 as--even as late as yesterday, I was confused as to whether we  
14 were going to be litigating those things today. We are prepared  
15 to litigate those things.

16           Now, I notice that one of the pro se motions in this  
17 case deals with the issue of Mr. Mohammed wanting to fire the  
18 very lawyers that come up here and want to speak on his behalf.  
19 But he doesn't want them to speak on his behalf, if I follow the  
20 motion that's been filed in this case.

21           So we need to hear from Mr. Mohammed as to whether or  
22 not he still adheres to his pro se motion or not. And we need  
23 to--in the future, civilian consultants that--and apparently

1 there are several of them that want to speak on clients that, at  
2 least according to the pro se motions, they don't want them to  
3 speak on their behalf.

4 So we think it's incumbent that this court tell JTF  
5 here and now, one, bring the three pro se accused to the  
6 courtroom, let's handle these pro se motions, put them at rest.

7 Now, with respect to Mr. Nevin's comment about  
8 maintaining the status, all we're dealing with there is dealing  
9 with counsel issues. That does not change the status quo. It  
10 didn't change the status quo in July when we heard issues in  
11 this case. It didn't change it in January after the President  
12 issued his executive order because we had a session then. So it  
13 doesn't change. That's our position.

14 The only thing we were telling you last week in our  
15 filing was that the 909 hearing, with respect to Mr. bin al  
16 Shibh, was the only thing that we were indicating that might  
17 possibly deal with that issue.

18 So we're saying, again, issue the order, tell JTF to  
19 bring the three individuals to the courtroom, let's handle the  
20 pro se motions, and then we wait until November. At that point  
21 in time, we will resume the commissions in this case.

22 MJ [COL HENLEY]: In the future, Counsel, and this is  
23 directed to all counsel, if you're confused about the scope of

1 the commission order, then the appropriate remedy is to seek  
2 clarification. Is that clear?

3 CTC [MR. SWANN]: I understand, Your Honor.

4 MJ [COL HENLEY]: Now, consistent with Judge Kohlmann's  
5 prior order, the JTF Commander or his superior can order each  
6 accused to be forcibly brought to the courtroom. If the JTF  
7 Commander in this case has chosen not to exercise that  
8 authority, this commission will not step in and do so.

9 Did I understand you correctly, Mr. Swann, that you  
10 desire to be heard on the pro se filings?

11 CTC [MR. SWANN]: Your Honor, we would like to be heard on  
12 the pro se motions. With that being said, I think before we  
13 begin that process, we would ask that this order, which as I  
14 understand, dated 21 September 2009, and in particular paragraph  
15 3, which has not been given to the----

16 MJ [COL HENLEY]: Which order are you referring to?

17 CTC [MR. SWANN]: The order that you issued, sir, about an  
18 hour and a half ago. It's styled as P-012.

19 I know for a fact that paragraph 3 has not been read  
20 to these individuals. And we're asking that at least  
21 that--well, at least the entire order be read to them, and allow  
22 them to decide whether--so they know, know now that we're going  
23 to decide some pro se motions today and that they have a right

1 to be here.

2 At that point in time, consistent with what you're  
3 saying, if they choose then not to come, so be it. We think  
4 that--we still think that the--that you have the power to compel  
5 the JTF Commander to have them here. But at a minimum, they  
6 should be read that particular paragraph, paragraph 3.

7 MJ [COL HENLEY]: That request is denied. Did you want to  
8 be heard on the motions themselves, Mr. Swann?

9 CTC [MR. SWANN]: Which one do you want to take up first,  
10 sir?

11 MJ [COL HENLEY]: D-105, 113, and 127, the three dealing  
12 with the request----

13 CTC [MR. SWANN]: With respect to D-105, sir----

14 MJ [COL HENLEY]: Can I finish, please?

15 CTC [MR. SWANN]: Sorry?

16 MJ [COL HENLEY]: Can I finish?

17 CTC [MR. SWANN]: Sure.

18 MJ [COL HENLEY]: The motions to release military standby  
19 counsel and civilian advisory counsel.

20 CTC [MR. SWANN]: With respect to D-105, the government  
21 takes no position on what counsel should be on the case.

22 Mr. Mohammed has indicated that he wishes to no longer have the  
23 assistance of both Mr. Nevin and Mr. McKay. He has indicated

1 that he wishes to have his military counsel, Colonel Michael  
2 Acuff, not part of the case; but he understands that apparently  
3 standby counsel should be on the case.

4 So with respect to that, we have no objection to  
5 Mr. Mohammed's request to dismiss both Mr. Nevin and Mr. McKay,  
6 and we oppose Colonel Acuff's dismissal and that he be appointed  
7 standby counsel as he currently is.

8 MJ [COL HENLEY]: Is that a consistent position with 113  
9 and 127?

10 CTC [MR. SWANN]: Is our position the same? Our position  
11 remains the same with respect to both Mr. Ali's request, as I  
12 understand it, and I think the other one is Mr. Bin Attash's  
13 request.

14 MJ [COL HENLEY]: Correct. Thank you.

15 DC [MAJ FITZGIBBONS]: Your Honor, may I be heard briefly?

16 MJ [COL HENLEY]: Can you approach the podium, please?

17 DC [MAJ FITZGIBBONS]: Yes.

18 **[Major Fitzgibbons did as directed.]**

19 DC [MAJ FITZGIBBONS]: With respect to D-113, Mr. Ali's  
20 motion, as I read the motion, Mr. Ali is requesting an advisory  
21 opinion of the court with respect to how to handle his counsel  
22 issues. He refers in the motion to a conflict of interest, and  
23 I wanted to inform the court that Mr. Ali has been given access



1 to my supervisory counsel, who is conducting an inquiry into  
2 whether or not that is, in fact, the case; and he is planning to  
3 return to the island to address these issues with Mr. Ali within  
4 the next month.

5 So I would request that the commission not--defer  
6 ruling on this motion because, as I said, it's a request for an  
7 advisory opinion, and the Office of the Chief Defense Counsel is  
8 working on dealing with the conflict issue noted by Mr. Ali in  
9 the motion.

10 MJ [COL HENLEY]: All right. Thank you, Counsel.

11 Did the government want to be heard on D-109, the  
12 motion to compel Arabic translation of all commission sessions?

13 CTC [MR. SWANN]: Simply, Your Honor, I think this issue  
14 has been addressed in previous motions. Judge Kohlmann ruled  
15 against that. We do oppose an Arabic translation. As I've  
16 indicated, each of these individuals have, at their disposal,  
17 translators.

18 I've actually worked with [REDACTED]. I think he's  
19 worked towards getting practically all of the translations done.  
20 I sent him an email back in July indicating that I was willing  
21 to help should there be any problems.

22 But, yeah, we oppose the record of trial being  
23 translated into Arabic at the government's request. If counsel

1 want to use their assets available to them to have that, then  
2 that's counsel's choice at that point in time.

3 MJ [COL HENLEY]: Thank you, Counsel. D-110, the motion to  
4 compel release of all prior commission sessions.

5 CTC [MR. SWANN]: Your Honor, we have no objection to that,  
6 subject to you authenticating the record of trial as to all of  
7 those sessions. Of course, classified sessions would never be  
8 released to the general public. We've only had just a few of  
9 those. But if you have authenticated the record, we don't  
10 oppose it.

11 MJ [COL HENLEY]: Have the prior sessions been reviewed by  
12 the government?

13 CTC [MR. SWANN]: Your Honor, I have reviewed every record  
14 of trial to include the last session, July 16th; to include the  
15 unclassified and the classified session, and I've submitted  
16 errata to the court in every instance. I did this personally.  
17 I cannot speak for the defense, sir.

18 DC [CDR LACHELIER]: Sir, if I may. Your Honor, as to  
19 D-110, Mr. bin al Shibh also has a special request for relief  
20 that we filed seeking the same relief. And it has been not--our  
21 special request for relief has not been designated by the court.

22 So I just wanted to note that we would ask the court  
23 to designate that special request which asked for publication of

1 those records. We have reviewed all those records ourselves as  
2 well. The only one we have not submitted errata for is the July  
3 16th hearing.

4 MJ [COL HENLEY]: All right. And if you know, Mr. Swann,  
5 what happens to the record after you provide the errata to  
6 the--I assume the Clerk of Court?

7 CTC [MR. SWANN]: Your Honor, I have provided all of my  
8 errata--my errata to [REDACTED] [sic]. She's received  
9 all of that errata. I think Sergeant [REDACTED] also gets it. I do  
10 not know what the court has--what the clerk has done with that  
11 information yet.

12 MJ [COL HENLEY]: Okay. Well, that's something--quite  
13 frankly, this is my third session, I believe. I have not  
14 received any transcript to authenticate.

15 CTC [MR. SWANN]: Sir, I will--I will check with the clerk  
16 to see where that errata is. I do know that I saw within--it  
17 was about a week after I submitted all my errata. It normally  
18 takes me about a day or two days after I receive it when I  
19 finish it up and send it back. I know that about a week later,  
20 I did see another notice from the clerk asking the defense  
21 counsel, and I can't tell you which one or how many of them,  
22 where was their errata regarding those matters.

23 I think Commander Lachelier just answered her own

1 question. She has not submitted any errata with respect to the  
2 16 July session. So I can't tell you with respect to the  
3 remainder of the folks.

4 MJ [COL HENLEY]: Is the R.M.C. [sic] rule consistent with  
5 the R.M.C. rule on defense errata, that there is no legal  
6 requirement that defense counsel provide errata before the judge  
7 authenticates?

8 CTC [MR. SWANN]: Your Honor, the rule is the same. It's  
9 taken verbatim as I recall.

10 MJ [COL HENLEY]: All right. So if you can make it happen,  
11 after the defense has been given an adequate time to review the  
12 record, provide it to the military judge for authentication.  
13 And if it can be released to the public, then it should be. So  
14 if the hold up is the defense errata--I think the standard is  
15 150 days--pages a day.

16 CTC [MR. SWANN]: I have that, Your Honor. I'll inform the  
17 clerk's office.

18 MJ [COL HENLEY]: All right. Thank you.

19 DC [CDR LACHELIER]: Just to correct the record--sorry,  
20 Your Honor. Trial counsel is incorrect. We have read  
21 everything and submitted errata through July 16th, not including  
22 July 16th, as to the errata. And as the court's aware, some of  
23 that was a classified proceeding. But we have submitted errata

1 for all the prior hearings.

2 MJ [COL HENLEY]: All right. Well, then there should be no  
3 excuse why the Trial Judiciary has not received the record of  
4 trial to authenticate. And we'll look into it, and it will be  
5 released to the public, at least that part that can be.

6 The last is D-111, Compel Research Supplies and  
7 Materials. Mr. Swann?

8 CTC [MR. SWANN]: Your Honor, this pro se motion was filed  
9 in May. May 13th, I believe, or thereabouts. In that motion,  
10 the pro se accused were looking to obtain things, for instance,  
11 to complete their laptops, they were asking for legal  
12 dictionaries, an Arabic-English dictionary. They were also  
13 asking for a typewriter, some charging for their batter--for  
14 their laptops. Then they wanted, as I understand it, some  
15 videotapes. And their complaint at that point in time was, I  
16 believe, that the Major that was acting as the liaison between  
17 the staff judge advocate's office and the camp was not looking  
18 out for their interests.

19 Armed with that information and looking at what they  
20 have requested here, I know they were requesting about three or  
21 four movies. One I recall having to do with "The Massacre at My  
22 Lai," that was a Harrison Ford movie. They were asking for  
23 that.

1           We looked at the four movies; we talked to the camp.  
2   The camp then decided that they did not--there were no security  
3   risks associated with it. The camp then provided all the  
4   movies. I understand they may have asked for a couple more and  
5   we're working to achieve that.

6           Now, the only thing in here as far as charging  
7   laptops, they have access to their laptops around the clock. We  
8   have sufficient chargers to be able to keep those laptops  
9   working, so that's been resolved.

10           They've been provided the dictionaries that they were  
11   requesting to include additional discovery material as I  
12   understand it. And at the present time, I'm not aware of  
13   anything that's outstanding with respect to what they are asking  
14   for. Therefore, I think this motion has been decided.

15           Now, I do note in the motion that someone indicated  
16   that the prosecution had agreed to provide them with a  
17   typewriter. That's not true. I don't know--quite frankly, I  
18   don't even know where I would find a typewriter today or even  
19   thought about finding a typewriter in today's technological way  
20   of doing business.

21           I do know that what we did in addition to the--when  
22   they were having their every-two-week meetings, they were asking  
23   to print out certain things, and so we arranged to have a

1 printer come here, so they could hook up their laptops to be  
2 able to print out material.

3           So I think we've accommodated everything they're  
4 asking for. If not, then all I need to do is to see another  
5 list of what they're--I will evaluate that list during the next--  
6 -certainly, the next 60 days or whatever time it takes me. I'll  
7 go right directly back to the accused, I will consider anything  
8 and everything that they want, that they haven't gotten up to  
9 now.

10           And if we can't provide it, we'll tell them that. But  
11 as far as I know, I think everything on the list, that I'm  
12 looking at in front of me, we have resolved with the exception  
13 of the classified discovery. We have not provided classified  
14 discovery in this case.

15           In fact, we're working extremely hard to make certain  
16 that there is no classified discovery in this case and that  
17 we're having a lot of this material downgraded to--certainly,  
18 for official use only, so that the accused can have the  
19 availability.

20           I know that there are about five--let's just say five  
21 sites that were exploited with a number of pieces of material  
22 evidence in this case probably totaling about three or 400  
23 pieces of evidence that we intend to provide the accused.

1           In addition to that, as you're aware, sir, Colonel  
2 Kohlmann approved somewhere in the neighborhood of about 350  
3 summaries of classified statements the accused had provided. I  
4 think you have seen some of these statements as well.

5           All of those summaries, despite the fact that they  
6 were initially thought to be at a SECRET level, we have been  
7 able to get those down to an OFFICIAL USE ONLY, and all of the  
8 accused will have a copy of those 350 or so statements.

9           I know that Mr. bin al Shibh's counsel has already  
10 been provided a copy of the statements that deal with him.  
11 Mr. Hawsawi's counsel has been provided a copy of the statements  
12 that deal with him. The other accused have not been provided,  
13 and we have not cross-worked. Every accused will have, you  
14 know, the other four statements at his availability just as soon  
15 as I get permission to turn those things over.

16         MJ [COL HENLEY]: Do you intend to turn it over before 16  
17 November?

18         CTC [MR. SWANN]: I intend to turn them over on 17  
19 November.

20         MJ [COL HENLEY]: Now, standby counsel or the civilian  
21 counsel has asked that the commission defer ruling on the pro se  
22 filing.

23         CTC [MR. SWANN]: I apologize, sir. I did not hear your



1 question.

2 MJ [COL HENLEY]: Civilian counsel asked that the  
3 commission defer ruling on any of the pro se filings until on or  
4 after 16 November.

5 CTC [MR. SWANN]: Your Honor, we're asking for a ruling  
6 now.

7 CDC [MR. NEVIN]: Excuse me, Your Honor. Could I address  
8 the court briefly on D-105?

9 MJ [COL HENLEY]: What aspect?

10 CDC [MR. NEVIN]: Well, just this, I wanted to tell the  
11 court that I was not misrepresenting anything to the court  
12 earlier today when I said, as an officer of the court, that I  
13 received a letter today from Mr. Mohammed asking me to speak for  
14 him. That's why I said that earlier. And counsel didn't refer  
15 to that, but I just wanted to reiterate that that's so.

16 And I believe also the court has received Lieutenant  
17 Colonel Acuff's pleading regarding D-105. And if not, I wanted  
18 to make sure that the court had received that.

19 MJ [COL HENLEY]: I have it.

20 CDC [MR. NEVIN]: Okay. Thank you. And then just last, on  
21 that last motion that was under discussion, I can tell the court  
22 that the correct translation of the word "typewriter" is really  
23 "printer." I think that's what the accused are interested in.

1 Thank you, Your Honor.

2 CTC [MR. SWANN]: I'm sorry, Your Honor. I think I heard  
3 someone indicate that the defense had a D-105 pleading, that  
4 Colonel Acuff had filed something. We have not received a copy  
5 of it.

6 MJ [COL HENLEY]: Colonel Acuff, was D-105--I don't recall;  
7 it wasn't provided under seal?

8 DC [LTC ACUFF]: No, Your Honor, it was not provided under  
9 seal. It was actually in basically final form before I left the  
10 office on Thursday and filed after I was out of the office. But  
11 it should have been filed electronically and Mr. Swann provided  
12 a copy.

13 MJ [COL HENLEY]: Okay. Mr. Swann, if your office does not  
14 have a copy, I think you can contact OMC Trial Judiciary; they  
15 can provide you a copy of the pleading.

16 CTC [MR. SWANN]: Thank you, sir.

17 CDC [MR. ROBINSON]: Your Honor, may I briefly address the  
18 court on D-113?

19 MJ [COL HENLEY]: Yes, sir.

20 CDC [MR. ROBINSON]: Should I approach the podium, Your  
21 Honor, or should I----

22 MJ [COL HENLEY]: I think that would be best, if you  
23 come up to the podium. Thank you. This is Mr. Robinson.

1 [Mr. Robinson did as directed.]

2 CDC [MR. ROBINSON]: Thank you, Your Honor. I simply  
3 wanted to point out that in D-113 Mr. Ali raises a concern about  
4 a potential conflict of interest with one of his lawyers. There  
5 is nothing in this pleading that suggests that there is a  
6 conflict of interest with either me or Ms. Lee, the other  
7 civilian 506(D) counsel.

8 And there is nothing in this pleading that requests  
9 that you do anything to dismiss us from the case. And so I  
10 wanted to ask that the court be aware, as far as I read this  
11 pleading, Mr. Ali is not asking you to do anything in terms of  
12 dismissing counsel today. That's all I wanted to say, Your  
13 Honor. Thank you very much.

14 MJ [COL HENLEY]: Thank you, Counsel.

15 Mr. Swann, if I can return briefly to your 16  
16 September motion to continue. In it, you ask the commission,  
17 "refrain from taking any actions in the case to preserve the  
18 status quo to the greatest extent possible," until a decision  
19 has been made by the Attorney General as to the appropriate  
20 forum to prosecute the accused.

21 I thought I just heard you ask that the commission  
22 rule on the outstanding pro se filings.

23 CTC [MR. SWANN]: Just a moment, Your Honor.

1           CTC [MR. RYAN]: Your Honor, could we have the court's  
2 indulgence for a moment?

3           MJ [COL HENLEY]: Certainly.

4 [The trial counsel conferred.]

5           CTC [MR. SWANN]: I'll backtrack, Your Honor. We're not  
6 asking you to do anything with respect to the pro se motions.  
7 Particularly, one reason being that these pro se accused were  
8 not aware that they were going to have to address these issues  
9 today because that order was not served on them; that rather  
10 than have an appellate issue because this case will go forward,  
11 rather than have an appellate issue, we're asking you that you  
12 not have to address or issue a final ruling on any of those pro  
13 se motions at this time.

14          MJ [COL HENLEY]: All right. Thank you, Counsel, for that  
15 clarification. The commission does find that Mr. Sheikh  
16 Mohammed, Mr. Ali, and Mr. Bin Attash have made a knowing and  
17 voluntary waiver of their right to be heard on the pro se  
18 filings currently before the commission. Of course, they can  
19 always ask for reconsideration. However, the commission will  
20 take the matters under advisement and defer rulings on each  
21 until on or after 16 November 2009.

22                 Does the government have anything further to address  
23 this afternoon?

1           CTC [MR. SWANN]: Nothing, Your Honor. I understand. But  
2 I do recall that we were obligated to provide the court with a  
3 finding of the sanity board in Mr. Hawsawi's case. That board  
4 met, they have issued their findings, and I think the court was  
5 provided with a copy of those findings.

6           Therefore, we would ask that this court then, just as  
7 soon as that 16 November timeframe, we set that hearing up, in  
8 the event the defense is still requesting one, that we get that  
9 matter resolved immediately after 16 November as well.

10          MJ [COL HENLEY]: Just so we're clear then, the government  
11 is asking that the commission take no action until on or after  
12 16 November, to include scheduling additional sessions, if  
13 sessions do become necessary?

14          CTC [MR. SWANN]: Well, I think--I think--I think the court  
15 can schedule sessions, for instance, for planning purposes. For  
16 instance, if you want to issue an order sometime between now and  
17 16 November and tell us we need to be back here on the 17th of  
18 November to start trying this case, then we certainly believe  
19 the court can do that.

20          But we're not asking for any session between now and  
21 16 November. Just going down, we need to resolve the Ramzi bin  
22 al Shibh hearing. We need to resolve what's left of the Hawsawi  
23 hearing, in light of the fact that the board came back and

1 answered all of the questions in that case and has indicated  
2 that Mr. Hawsawi is competent to represent himself. And then we  
3 need to move on.

4 And hopefully, within the next 60 days, we will be  
5 getting the okay to start turning additional discovery over to  
6 these individuals. We have no intention whatsoever to stand  
7 down. We have every intention of going forward and to provide  
8 the accused whatever we need to provide them in the next 60 days  
9 to keep this case in an active process. And we will continue to  
10 do that.

11 MJ [COL HENLEY]: Right. Well, again, it may be an  
12 inconsistency just to the commission. But in your 16 September  
13 request for continuance, you appear to ask that the 909 hearing  
14 for Mr. bin al Shibh begin no earlier than 16 November.

15 CTC [MR. SWANN]: Correct, sir.

16 MJ [COL HENLEY]: And that assumes that the administration  
17 has made a decision on or before that date.

18 CTC [MR. SWANN]: That is correct, sir.

19 MJ [COL HENLEY]: So until the commission has made a final  
20 determination as to the proper forum to prosecute the five  
21 accused in this commission, is there anything the commission can  
22 schedule?

23 CTC [MR. SWANN]: No, Your Honor. I agree.

1 MJ [COL HENLEY]: Okay. So you anticipate no action until  
2 the administration has made a determination as to the forum to  
3 prosecute the accused?

4 CTC [MR. SWANN]: That's correct. But we will continue to  
5 provide the individuals what we have to do----

6 MJ [COL HENLEY]: Understood.

7 CTC [MR. SWANN]: ----in order to keep this case moving so  
8 that we are not behind the clock when the time comes.

9 MJ [COL HENLEY]: Right. So it's--neither side is  
10 expecting a scheduling order until the administration has made a  
11 final determination as to the appropriate forum to prosecute the  
12 accused.

13 CTC [MR. SWANN]: We understand.

14 MJ [COL HENLEY]: If that happens before the 16th of  
15 November, then it's possible the commission will issue a  
16 scheduling order. If it doesn't happen until the 16th, then it  
17 may be the 17th before you hear from the commission again as to  
18 when we'll go back on the record, if at all.

19 CTC [MR. SWANN]: We understand, sir.

20 MJ [COL HENLEY]: Okay.

21 CTC [MR. SWANN]: Thank you.

22 DC [CDR LACHELIER]: Your Honor, I apologize. I have a  
23 brief concern. The government seems quite keen on getting this

1 order, that Your Honor issued today, read to the accused. And  
2 in light of what happened at the July hearing, I want to make  
3 sure that if anything is read to any accused, it's to the pro se  
4 accused and not to represented accused, such as Mr. bin al  
5 Shibh.

6 And if any communications take place about this order,  
7 it seems sort of obvious that it should come from counsel of  
8 record and detailed defense counsel and not from the government.

9 MJ [COL HENLEY]: I believe all the order provides in the  
10 last paragraph is that it be translated into Arabic and a copy  
11 of the order provided to each accused. That's it. No  
12 discussions as to what the order means or the impact that it  
13 will have on further proceedings. But that's consistent with  
14 everything else that the commission has issued.

15 DC [CDR LACHELIER]: Right. No, I understand the court's  
16 order. I'm just concerned about the government's reaction to  
17 it, sir.

18 And then lastly, Your Honor, you mentioned in your  
19 order that we would be excluded from proceedings or hearings  
20 that do not involve Mr. bin al Shibh. And it sounds like we're  
21 not going to have any further proceedings, but we would just  
22 register our objection to that for the record, although Mr. bin  
23 al Shibh, the court has noted to him that he can voluntarily



1 absent himself, he is represented, and his counsel has a right  
2 to be present for him at any hearing in this case.

3 MJ [COL HENLEY]: Well, that would be inconsistent with the  
4 commission's order. But considering that no substantive matters  
5 would be addressed this afternoon, you are allowed to stay. If  
6 you think that you are entitled to attend, even if your client  
7 doesn't, then the appropriate mechanism is to file a response to  
8 the order.

9 DC [CDR LACHELIER]: Yes, sir. As you have----

10 MJ [COL HENLEY]: With any legal authority to support that  
11 position.

12 DC [CDR LACHELIER]: And we will do that, sir. As you  
13 know, we received this order about 12 o'clock today, right  
14 before we came into court. So there was no opportunity to  
15 respond.

16 But I would also note, Your Honor, that the court's  
17 previous position to Mr. bin al Shibh was that he has a right to  
18 voluntarily absent himself and that--but that he would be  
19 present in any hearing, unless there was a disruption. So the  
20 court's present position is a reversal of its position from  
21 January.

22 MJ [COL HENLEY]: Well, Commander, you should probably read  
23 the commission orders carefully, that the prior sessions did

1 involve all five; the three pro se filings did not. So the  
2 orders are not inconsistent. And depending on the substance of  
3 the proceeding, then you may very well attend, even if your  
4 client doesn't. But that determination will be made on a  
5 case-by-case basis.

6 DC [CDR LACHELIER]: Okay. And we'll react at the time  
7 when we get the docketing order for that particular hearing.  
8 Thank you, Your Honor.

9 MJ [COL HENLEY]: Thank you, Counsel.

10 Counsel, did you have anything further?

11 CDC [MR. NEVIN]: No, thank you.

12 MJ [COL HENLEY]: Well, then the commission will stand in  
13 recess until such time as the administration has determined  
14 whether the accused will continue to be prosecuted before a  
15 military commission. Again, that decision should occur on or  
16 before 16 November 2009.

17 Until then, the military commission is in recess.

18 **[The R.M.C. 803 session recessed at 1352, 21 September 2009.]**

19 **[END OF PAGE]**

**CERTIFICATION OF TRANSCRIPT**

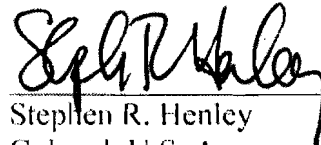
**IN THE CASE OF:**

**UNITED STATES v. KHALID SHEIKH MOHAMMED also known as MUKHTAR AL  
BALUCHI, HAFIZ, MEER AKRAM, ABDUL RAHMAN ABDULLAH AL GHAMDI;  
WALID MUHAMMAD SALIH MUBAREK BIN 'ATTASH also known as KHALLAD,  
SALAH SAEED MOHAMMED BIN YOUSAF, SILVER, TAWFIQ;  
RAMZI BINALSHIBH also known as ABU UBAYDAH, AHAD ABDOLLAHI SABET,  
ABU UBAYDAH AL HADRAMI;  
ALI ABDUL AZIZ ALI also known as AMMAR AL BALUCHI, ISAM MANSUR, ISAM  
MANSAR, ISAM MANSOUR, ALI, HANI;  
MUSTAFA AHMED ADAM AL HAWSAWI also known as ZAHIR, HASHEM  
ABDOLLAHI, MUHAMMAD AHANAD, ABDERAHMAN MUSTAFA  
ISN: 10024; 10014; 10013; 10018; 10011**

**CERTIFICATION OF TRANSCRIPT BY MILITARY JUDGE**

This is to certify that pages 1245 thru 1278 are an accurate verbatim transcript of the proceedings held in the above styled case on 21 September 2009.

28 October 2009  
Date

  
\_\_\_\_\_  
Stephen R. Henley  
Colonel, U.S. Army  
Military Judge